



## *Review of the 2023 Legislative Sessions*

### *Intro to the 2023 Regular Session*

Legislative redistricting from the 2021 Session led to a one-seat pickup for Republicans in the Texas Senate (19 Rs and 12 Ds) and a two-seat pickup for Rs in the Texas House (86 Rs and 64 Ds) in the November 2022 election. The Governor and Lt Governor won reelection, and Dade Phelan was selected by the House members again as Speaker. So, leadership remained unchanged from the 2021 Session.

The Lt Governor appointed 15 R committee chairs and 1 D committee chair. The Speaker appointed 26 R committee chairs and 8 D committee chairs. In the Senate, all committee assignments are made by the Lt Governor. In the House, half of the committee assignments are selected by each legislator based on seniority while the other half are made by the Speaker.

Heading into the 2023 Regular Session, the State was awash in cash from the record-breaking \$33 billion surplus that amassed over the previous two years. The question for the Legislature was how to divvy up the two-year \$321 billion total budget among tax relief, personnel, infrastructure, investments, and leaving monies unspent/saved for future sessions.

When the dust cleared, the Legislature approved a tremendous amount of impactful spending:

- \$37 billion for highways/roads
- \$17.6 billion for property tax relief
- \$5 billion for low interest loans and grants to fund construction of natural gas-fueled power plants for the Texas grid by June 2029
- \$3 billion endowment for the Texas State, Texas Tech, Univ of Houston, and Univ of North Texas systems
- \$2 billion for vertical construction (state agencies, higher Ed, TFC, prisons, state hospitals, deferred maintenance)
- \$1.5 billion for rural broadband

- \$1.5 billion in grants to low-income students for community college and four-year education
- \$1.4 billion for public school safety (facility upgrades, armed guards, mental health)
- \$1 billion for water infrastructure
- \$1 billion to expand and maintain Texas parks
- Almost \$1 billion to the Employee Retirement System for unfunded liabilities
- Almost \$1 billion for General Land Office disaster recovery infrastructure projects
- \$650 million to community colleges
- \$625 million for flood mitigation
- \$440 million to UT-Austin to create the Texas Institute of Electronics
- \$226 million to Texas A&M to create the Center for Microdevices and Systems

Some of these items are accompanied by proposed constitutional amendments, which will require statewide approval by voters on November 7, 2023.

The Regular Session again ended with a wild month of May: for the first time in 100 years, the Texas House expelled one of its own members, State Rep. Bryan Slaton (R-Royse City), for providing alcohol to and having sex with one of his 19-year old staffers. The vote was 147-0. Three weeks later, the House voted 121-23 to impeach the Attorney General (whose wife is a sitting state senator) over the dynamics swirling around a proposed \$3.3 million whistleblower settlement brought by former top executives in the AG's office. The Senate impeachment trial has been set for September.

The Regular Session ended with over 8,000 bills filed (a record), just under 1,200 new laws, and 76 bills vetoed by the Governor (2<sup>nd</sup> most all time; for reference, the 2021 Session had 20 vetoes). AGC-TBB monitored 1,095 bills during the Session.

Below are ten “interesting” bills that were actually filed in 2023:

- Relating to the duration of a special open hunting season for game animals and certain game birds taken by persons under 17 years of age (HB 555)
- Relating to the solicitation of pen pals by certain inmates of the Texas Department of Criminal Justice (HB 607)
- Relating to the licensing and regulation of music therapists (HB 667)
- Relating to the regulation of raising or keeping six or fewer chickens by a political subdivision or property owners association (HB 1191)
- Relating to the advertisement of disposable wipes as flushable (HB 2595)

- Relating to the release of a balloon (HB 3300)
- Relating to methods of instruction for the eyelash extension specialist curriculum (HB 3581)
- Relating to prohibitions on the use of grant money awarded by the Cancer Prevention and Research Institute of Texas to procure or obtain organs from a hospital located in China (HB 3914)
- Relating to the provision of artificial intelligence mental health services (HB 4695)
- Relating to creating a cause of action for nonconsensual condom removal (HB 5179)

Three of the biggest issues that didn't get resolved in the Regular Session were property tax relief, K-12 school vouchers, and ISD teacher pay raises. Property tax relief eventually passed in the 2<sup>nd</sup> Special Session and is discussed later in this summary. The last two issues are expected to be taken up in a 3<sup>rd</sup> Special Session this October, after the September impeachment trial of AG Paxton.

#### *New laws – general, non-construction issues*

Creation of specialty business trial court (Texans for Lawsuit Reform bill) – **AGC-TBB PRIORITY**

HB 19 by Rep Murr creates a new specialty business district court with statewide jurisdiction over non-insurance business contractual disputes where the disputed amounts are above \$10 million, if both parties agree to court's jurisdiction in their contract. The judges will be appointed by the Governor to two-year terms (i.e., not elected) and must have 10 years of business experience and be confirmed by 2/3rds of the Senate. Effective 9-1-23. The bill applies to civil actions brought on or after 9-1-24.

Creation of specialty statewide appellate court (Texans for Lawsuit Reform bill) – **AGC-TBB PRIORITY**

SB 1045 by Sen Huffman creates a new state appellate court, the 15<sup>th</sup> Court of Appeals. The judges will be elected statewide and hear appeals from the specialty business court and on cases involving state agencies, sovereign immunity, and constitutional questions — no criminal cases. Effective 9-1-23.

## New signature State economic development program

HB 5 by Rep Hunter is the successor to the State's "Chapter 313 program," which was repealed at the end of 2022. HB 5 provides temporary tax incentives for business projects that are capital intensive and add permanent jobs. The Comptroller will develop the rules of the program, which will be operational January 1, 2024. Effective 9-1-23.

## Creation of the Texas Space Commission & Aerospace Research & Space Economy Consortium

HB 3447 by Rep Bonnen creates a space commission, which is dedicated to distributing funding to aerospace innovation. The board will have nine seats, filled by the Governor, Lt Governor, and Speaker and will distribute \$350 million in taxpayer dollars to help develop the highly-competitive space industry in Texas. HB 3447 also creates the Aerospace Research & Space Economy Consortium, to plan and implement educational opportunities for research that promotes development and commercial space activity in Texas. The consortium membership will consist of higher education institutions in Texas and be governed by a nine-member executive committee. Effective 9-1-23.

## Texas Semiconductor Innovation Consortium (Texas CHIPS Act)

HB 5174 by Bonnen creates a consortium that will research initiatives into the manufacturing of microchips and semiconductors. The consortium will have access to \$698,300,000 and help leverage federal funds for "onshoring" production. Effective 6-9-23.

## Ban on COVID-19 state and local government mandates re: vaccines, wearing face coverings, closings

SB 29 by Sen Birdwell. Exceptions for nursing homes, prisons, and health care facilities. Effective 9-1-23.

## *New laws – general, non-construction issues (cont'd)*

Annual vehicle safety inspections end in 2025; emissions inspections still required in 17 most populous counties – HB 3297 by Rep Cody Harris. Effective 1-1-25.

Drunk drivers who kill parents of minors must pay child support – HB 393 by Rep Goldman. Effective 9-1-23.

“Passing” vehicles must return to original lane and keep left lane clear, where designated “left lane for passing only” – HB 3126 by Rep Gámez. Effective 9-1-23.

Illegal voting is now a felony – HB 1243 by Rep Hefner. Effective 9-1-23.

Drug dealers may be prosecuted for murder for fentanyl deaths – HB 6 by Rep Goldman. Effective 9-1-23.

Allowing courts to remove DAs who refuse to prosecute entire classes of cases (e.g., abortion, marijuana laws, etc.) – HB 17 by Rep Cook. Effective 9-1-23.

### New laws on social issues:

- Ending diversity, equity, inclusion (DEI) offices at higher ed institutions – SB 17 by Sen Creighton. Effective 1-1-24.
- Ban puberty blockers/hormone treatments for minors – SB 14 by Sen Campbell. Effective 9-1-23.
- Ban drag shows – SB 12 by Sen Hughes. Effective 9-1-23.
- Allowing ISDs to use school safety funds to hire unlicensed chaplains as counselors – SB 763 by Sen Middleton. Effective 9-1-23.
- Regulating transgender athletes in college athletics participation – SB 15 by Sen Middleton. Effective 9-1-23.
- Ban sexually explicit books from school libraries and require bookstores to rate books for sexual content – HB 900 by Rep Patterson (suit was filed in July by bookstores to challenge). Effective 9-1-23.

## *New laws – construction industry-related*

### State preemption of local ordinances regulating private business – ***AGC-TBB PRIORITY***

HB 2127 by Rep Burrows/Sen Creighton was the third attempt to pass a bill preempting local city/county rules that overly regulate private businesses, creating a patchwork of confusing regulations from area to area. The new law comprehensively preempts any city/county regulation of private business not explicitly authorized by state law – and includes paid leave, scheduling, benefits, work breaks, and criminal background checks. The new law authorizes trade associations to sue on behalf of their members to enforce the preemption – and includes injunctive/declarative relief and recovery of attorney’s fees. The City of Houston has already sued to challenge the new law on constitutional grounds, and was recently joined by the City of San Antonio. Effective 9-1-23.

### Fix certificate of merit dilemma re: third-party claims on public design-build projects – ***AGC-TBB PRIORITY***

HB 2007 by Rep Martinez/Sen Parker was the second attempt to fix the issue created by the Legislature’s 2019 expansion of certificate of merit requirements to third-party claims against design professionals. On design-build projects, sometimes this expansion required getting a certificate of merit against a design professional on your own team, which created insurance coverage problems. HB 2007 removes the certificate of merit requirement in these situations on public design-build projects. Effective 9-1-23.

### School background checks fix for K-12 projects (DPS bill) – ***AGC-TBB PRIORITY***

HB 4123 by Rep Guillen/Sen Zaffirini is DPS’s comprehensive reform bill for accessing the criminal background database, which was necessitated by a 2019 FBI audit that resulted in barring private entities (e.g., contractors) from accessing the database. This created uncertainty with the ISDs for how to comply with state laws requiring contractors to background check workers in some instances. HB 4123 applies heightened standards for workers who will be around kids in school and creates a “qualified school contractor” designation. Both DPS and the Texas Education Agency (TEA) will be jointly crafting rules to implement the school background checks process for contractors. Effective 6-13-23.

## Community college funding – *AGC-TBB PRIORITY*

HB 8 by Rep VanDeaver (along with HB 1) provides \$648 million to community colleges, including \$33 million in seed grants for programs in high-demand fields that meet regional and state workforce needs. HB 8 completely overhauls how community college funding will be distributed in the future, basing it on student outcomes (e.g., number of students who earn a certificate or degree, or transfer to a four-year university) rather than forcing all the community colleges to fight politically over a set pot of money every session. Community colleges will now compete for \$ against their own performance history. Effective 6-9-23.

Creation of the “Lone Star Workforce of the Future Fund” within the Texas Workforce Commission with grants for JUCOs, technical institutes, and non-profits

HB 1755 by Rep Button. Effective 9-1-23.

Voiding out-of-state venue clauses in contracts for lawsuits on Texas construction projects

HB 2879 by Rep Oliverson/Sen Bettencourt passed the House 144-0, passed the Senate 31-0, and was **VETOED by the Governor**. The consensus is that HB 2879 got caught up in the very public fight between the Governor and Sen Bettencourt over the property tax relief bills in the first Special Session, resulting in the Governor vetoing several (seven) bills carried by Sen Bettencourt — many with no opposition.

Ban on contractually waiving the right to repair on public projects

HB 2965 by Rep Vasut/Sen Creighton. Effective 9-1-23.

Limiting use of workers comp experience modifiers on public projects

HB 679 by Rep Keith Bell prohibits construction contracts on public work from requiring a specified experience modifier to accept the offer or submit a bid. Effective 9-1-23.

## *New laws – construction industry-related (cont'd)*

### Limiting use of workers comp experience modifiers on public projects

HB 679 by Rep Keith Bell prohibits construction contracts on public work from requiring a specified experience modifier to accept the offer or submit a bid. Effective 9-1-23.

### Right to refuse to perform unsigned change orders

HB 3485 by Rep Keith Bell amends the Texas Prompt Pay Act to allow contractors to refuse to proceed with additional work if: (a) no executed change order for the additional work, and (b) the amount of the disputed/unsigned change orders exceeds “or is anticipated to exceed” 10% of the contract amount. Applies upstream and downstream – and to both public and private work. Effective 9-1-23.

### Comprehensive reform of school safety and security requirements

HB 3 by Rep Burrows/Sen Nichols is the Legislature’s response to the Uvalde school shooting. HB 3 provides new standards of emergency preparedness and response; requires active shooter response plans in coordination with local law enforcement and DPS; requires at least one armed guard at every Texas campus; requires the TEA commissioner to develop rules for safety requirements in construction of new schools and renovating existing schools; requires reviews of facilities standards every five years; authorizes previously-issued bond proceeds to be used for school safety improvements; requires routine school safety audits; develops school security best practices; requires mental health training for all school employees who interact with students. Effective 9-1-23.

### Residential construction liability cleanup

HB 2022 by Rep Leach/Sen King imposes even stricter limitations on recoverable construction defect, warranty, and habitability claims for residential construction. Effective 9-1-23.



## *New laws – construction industry-related (cont'd)*

### Six-year statute of repose with warranties for non-multi family residential construction

HB 2024 by Rep Leach/Sen King drops the statute of repose to six years if the builder provides a compliant written warranty providing: one year for workmanship and materials; two years for plumbing, electrical, HVAC; and six years for major structural components. Without those warranties, the statute of repose remains at ten years. Effective 6-9-23.

### 10-year “sunset” of municipal building permit fees

HB 1922 by Rep Dutton requires city councils to review, hold a public hearing, and vote to renew these fees every ten years — or they automatically expire. Effective 1-1-24.

### Creation of historic infrastructure sustainability fund

SB 1332 by Huffman will help establish sustainable funding to preserve historic sites across the State, allowing the Texas Historical Commission to plan for its long-term needs and freeing future legislatures from having to consider dozens of potential historic site projects every two years. Effective 9-1-23.

### Creation of State buildings preservation fund

SB 1333 by Huffman will help establish sustainable funding for the preservation of the Texas Capitol, Governor's Mansion, Texas State Cemetery, the Bob Bullock Texas State History Museum, and the other facilities managed by the State Preservation Board. Effective 9-1-23.

## *New laws – construction industry-related (cont'd)*

Allowing third-party inspections and reviews of plats, property development plans, permits

HB 14 by Rep Harris/Sen Bettencourt provides for third-party review of plats and property development plans, permits, and similar documents – and the inspection of an improvement related to such a document – if the regulatory authority delays too long in making a decision on the original application. The bill does not include municipal building permits and inspections, but discussions are already underway about adding them to the legislation next session. Effective 9-1-23.

## *Bills that didn't pass – construction industry-related*

Owner-caused delays on public projects – **AGC-TBB PRIORITY**

HB 2265 by Rep Leach/Sen Hughes passed the House 136-8, passed Senate committee 8-1, and died on the last Senate Intent calendar of the Session. This was the first attempt to pass this bill, which would've made public owners, not contractors, responsible for owner-caused delays. The bill was heavily negotiated in the House and narrowed as the session progressed: exempting critical infrastructure (as was done in the design defects bill that passed in 2021); exempting residential disaster recovery projects (requested by the General Land Office); requiring contractor to mitigate; providing a notice process; and specifying recoverable costs. At the end of Session, the Senate raised questions about the bill's waiver of sovereign immunity (TxDOT projects do not enjoy statutory waiver of sovereign immunity as commercial projects do). This bill will almost certainly return next session.

\$1.5 billion workforce/vocational training endowment for Texas State Technical College (TSTC) and the Lamar technical colleges – **AGC-TBB PRIORITY**

SJR 81 by Sen Birdwell/Rep Wilson was the first attempt to create a substantial endowment that TSTC/Lamar could use to help train much-needed workers for Texas employers. Currently, two million Texans have no GED, high school diploma, or college degree. TSTC/Lamar technical colleges are not authorized to tax property as community colleges are, and they don't get the tuition and

appropriation levels of other higher ed institutions. Ironically, SJR 81 passed the Senate 30-0 and passed the House 146-0, but died on the last night of the Session because the Lt Governor and Speaker couldn't agree on the \$ split between the two sets of institutions. This legislation will return in a future session.

#### Commercial construction defects litigation reform

HB 2310 by Rep Canales passed House committee 5-3. It would've required owners and contractors suing downstream for commercial construction defects to attach a verified, "certificate of merit"-type affidavit laying out specific facts as to why that contractor/sub is being sued. The stated purpose of the bill was to allow subs who've performed work unrelated to the defects to get more easily dismissed. A concern of the bill was that it would inadvertently lead to more trial lawyer abuse in defects cases and put GCs in a particularly difficult position.

#### Expansion of E-verify

SB 1621 by Sen Kolkhorst/Rep Toth passed Senate committee 7-4 but was removed from the Senate Intent calendar after being on for 11 days. SB 1621 was the most expansive e-verify bill ever filed in the Texas Legislature. It would have required state contractors to e-verify employees and ensure subs maintain e-verify compliance; required local governments to e-verify their employees; and required private businesses who do no government work to e-verify their employees if they receive any permit, license, certification, registration, etc. from a governmental entity. Had debarment penalty provisions.

#### Providing GCs/subcontractors documents incorporated by reference in a contract

HB 2657 by Rep Leach passed House committee 8-0 and would have required owners, GCs, and subs to provide copies of documents incorporated by reference into a construction contract, if requested by the downstream contractor. If the request isn't honored within ten days, the contract provision referencing the documents would be voidable.

## *Bills that didn't pass – construction industry-related (cont'd)*

Extending trust funds protections to assignees/factoring companies

HB 1864 by Rep Slawson/Sen Hughes passed House 140-0.

Expanding trust funds protections to statutory retainage

HB 1963 (Rep Leach) passed House committee 7-1 and would've tied trust fund protections to statutory retainage. Beneficiaries who prevail against trustees would recover attorney's fees and costs as of right. Concerns were raised that this would lead to more retainage being withheld as projects progress, than is current practice.

Repeal of sales tax for construction repair/remodel

HB 3622/SB 2187 by Rep Lozano/Sen Hinojosa. Never got a hearing.

Public-private partnerships (P3)

SB 1984 by Sen Alvarado was heard in the Senate. SB 1984 was filed late in the Session and was a complete overhaul of the State's P3 statute, which SB 1984's supporters claimed is too ambiguous and complex, having led to zero P3s being built since the State's P3 statute was first enacted in 2011.

Misclassification of construction workers

HB 1054 by Rep Turner passed the House by a 74-57 vote. It would've imposed administrative penalties on construction contractors who misclassify workers and required the Workforce Commission to notify all govt owners who do business with the contractor.

*Bills that didn't pass – construction industry-related (cont'd)*

State web-based database of employers penalized for failure to pay wages/wage theft

HB 2872 by Rep Mary Gonzalez passed House committee 9-0.

Mandatory workers comp for all construction contractors

HB 778 by Rep Walle passed House committee 7-1. Texas is one of two states that do not mandate worker's compensation coverage for their employees. HB 778 would implement that mandate for construction employees only, regardless of whether the work is on a public or private project.

Using Texas Workforce Commission data to establish prevailing wage rates

HB 2429 by Rep Morrison was heard in the House and would've added a third option for establishing local prevailing wage rates. The other two options currently in existence are (a) doing a local wage survey, and (b) using US Dept of Labor's Davis Bacon rates.

Extending ban on discrimination re: project labor agreements (PLAs) for State-funded projects to projects containing local funds

SB 936 by Sen Hancock/Rep Smithee passed the Senate 19-12, passed House committee 8-3, but was killed on the House floor on a procedural point of order. Current law bans governmental entities using state funds from discriminating against a person bidding for the contract based on their agreements/relationships with collective bargaining organizations. SB 936 would've extended this ban to projects funded by local governments.

Raise contract threshold from \$25,000 to \$100,000 for requiring payment bonds on non-municipal govt projects

HB 857 by Rep Gervin-Hawkins was heard in House.

### ***Bills that didn't pass – construction industry-related (cont'd)***

Raise contract threshold from \$1M to \$5M for restricting change orders to 25% of contract amount

HB 2854 by Rep Gervin-Hawkins didn't get a hearing. HB 2854 also would've allowed city councils, school boards, and commissioners courts to designate authority to staff to allow change orders up to \$250,000 (current law is \$50,000).

Raise contract thresholds from \$50,000 to \$100,000 on local govt construction projects for which formal procurement procedures are required

HB 1132 (Spiller) passed House committee 8-0.

### ***Bills that didn't pass - general, non-construction issues***

- Property tax relief (passed in Special Session #2 in July)
- Border security (passed in Special Session #1 in June)
- School choice/vouchers (expected in Special Session #3 in October)
- ISD teacher pay raise (expected in Special Session #3 in October)
- Additional gun restrictions – dozens of bills in response to the Uvalde school shooting
- Ending tenure for university professors – SB 18 by Sen Creighton
- Requiring the Ten Commandments to be posted in ISD classrooms – SB 1515 by Sen King
- Legalizing online sports betting – HJR 102 by Rep Leach
- Legalizing casinos – HJR 155 by Rep Geren
- Banning entities and illegal US residents from China, Russia, Iran, and North Korea from owning/buying certain types of Texas property (farm and ranch land, minerals, mines, quarries, timber land) – SB 147 by Sen Kolkhorst (passed Senate 19-12, died in House)
- Ban on private companies mandating vaccines – SB 177 by Sen Middleton (would have authorized lawsuits against companies, employers, and doctors – passed Senate 20-11, died in House)

## *Special Sessions #s 1 & 2*

On the same evening that the Regular Session ended, the Governor immediately called a Special Session on property tax relief and border security. The latter passed, but property tax relief failed to pass because the Lt Governor was at an impasse with the Governor and House on the specifics for delivering the property tax relief. This impasse was resolved in the second Special Session, and the following tax relief package passed in July:

- PROPERTY TAX RELIEF: \$12+ billion in state spending fund local cut to the ISD property tax rate for all homeowners and business properties (SB 2)
- PROPERTY TAX RELIEF: Homesteads (~5.7 million homeowners) get their homestead exemption increased from \$40,000 to \$100,000. (HJR 2)
- PROPERTY TAX RELIEF: Non-homesteads valued at \$5 million and under (both residential and commercial properties) get a 20% temporary appraisal cap (three-year pilot project that expires 12-31-2026) (HJR 2)
- APPRAISAL REFORM: For counties over 75,000 population, expands the size of local appraisal boards by adding three elected members to the six appointed members, for a total of nine. (HJR 2)
- BUSINESS TAX RELIEF: Increases the “no tax due” threshold for franchise tax on small businesses from \$1 million to \$2.47 million and ends the requirement to file a “no tax due” tax return, applies to report originally due on or after 1-1-2024 (SB 3).

## *September impeachment trial of Attorney General Ken Paxton*

After the House impeached the AG Paxton, he was forced by Texas law to step down from his duties running the AG’s office pending the trial outcome. In his absence, his duties are handled by an appointee of the Governor. If at least 2/3rds of the Senators find AG Paxton guilty of the House’s charges, he’ll be removed from office and barred from future office. Any vote short of 2/3rds to convict will restore AG Paxton to the office, where he’ll be up for re-election in 2026.

## *Special Session #3*

After the impeachment trial, the Governor is expected to call a third Special Session in October on school vouchers and teacher pay raises.

*Constitutional amendments of note on the November 7, 2023 ballot*

- Prohibiting state taxation of individual/family net worth or wealth
- Increasing ISD homestead exemption from \$40,000 to \$100,000 and adding three-year, 20% appraisal cap on non-homestead property valued under \$5 million
- Dedicating \$100 million per year from the Rainy Day Fund to the to the Texas University Fund
- One-time \$3.3 billion transfer to retired teachers' annuity fund
- Increase judges' mandatory retirement age from 75 to 79
- Creating the broadband infrastructure fund to help finance high-speed broadband and telecommunications service projects across the State
- Creating the Texas water fund to help finance water projects across the State
- Creating the centennial parks conservation fund to help finance the creation and improvement of state parks and dedicating \$1 billion to the fund
- Creating the Texas energy fund to help finance the construction, maintenance, and modernization of electric generating facilities